

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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| LOUISIANA WHOLESALE DRUG CO., INC., |) | Civil Action No. 07-cv-7343 (HB) |
| |) | |
| Plaintiff, |) | Hon. Harold Baer, U.S.D.J. |
| |) | ECF CASE |
| v. |) | |
| |) | |
| SANOFI-AVENTIS, SANOFI-AVENTIS |) | |
| U.S., LLC and AVENTIS |) | |
| PHARMACEUTICALS, INC., |) | |
| |) | |
| Defendants. |) | |
| |) | |

**DEFENDANTS SANOFI-AVENTIS US LLC AND AVENTIS
PHARMACEUTICALS, INC.'S REQUEST FOR JUDICIAL NOTICE**

NOTICE IS HEREBY GIVEN that Defendants sanofi-aventis us llc and Aventis Pharmaceuticals, Inc. request that the Court take judicial notice of Third Party Sandoz Inc.'s Motion to Quash Subpoena and the Declaration of Edward M. Reisner, Esq. in Support of Sandoz Inc.'s Motion to Quash Subpoena filed in this court on November 27, 2007. (Attached hereto as Exhibit A.) Defendants respectfully request that the Court take judicial notice of these documents in consideration of Defendants' Motion to Dismiss The Complaint for Failure to State a Claim filed on October 15, 2007. This request is made pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedures and Rule 201 of the Federal Rules of Evidence, as well as the authorities cited below. This request is timely given that the documents to be noticed did not exist at the time Defendants filed their opening or reply briefs in support of their Motion to Dismiss.

In deciding a 12(b)(6) motion to dismiss, a court may consider not only the facts alleged in the complaint and the documents attached thereto, but also any facts of which judicial notice may properly be taken under Rule 201 of the Federal Rules of Evidence. *Kramer v. Time Warner, Inc.*, 937 F.2d 767, 773 (2d Cir. 1991). Under Rule 201 of the Federal Rules of Evidence, a court may take judicial notice of public documents, including court documents. *Vaughn v. Consumer Home Mortg. Co., Inc.*, 470 F. Supp. 2d 248, (E.D.N.Y. 2007) (“It is, however, well established that courts may take judicial notice of court records.”). Such documents may be noticed for the fact of their existence only. *Kramer*, 937 F.2d 767, 774 (2d Cir. 1991).

Defendants ask that the Court take judicial notice of the fact that Sandoz, Inc. filed the Motion to Quash and the supporting Declaration. The fact that Sandoz, Inc., a generic manufacturer of leflunomide, filed documents reflecting its belief that the Citizen Petition at issue in this case did not delay FDA approval of its abbreviated new drug application underscores the wholly speculative nature of Plaintiff’s claim. Moreover, as Defendants argued in their Motion to Dismiss the Complaint, the fact that Sandoz was amending its ANDA right up to the date of FDA approval supports the argument that the Complaint fails to adequately allege causation, and, as such, Louisiana Wholesale lacks standing to pursue its claim. See Defendants’ Motion to Dismiss the Complaint for Failure to State a Claim at 16-18; Defendants’ Reply Memorandum in Support of Defendants’ Motion to Dismiss the Complaint for Failure to State a Claim at 5-6.

Dated: December 7, 2007

Respectfully submitted,

/s/ Rosanna K. McCalips
John M. Majoras
Julia E. McEvoy (admitted *pro hac vice*)
Rosanna K. McCalips (admitted *pro hac vice*)
Jones Day
51 Louisiana Avenue, NW
Washington, DC 20001
Tel.: 202-879-3939
Fax: 202-626-1700

*Counsel for SANOFI-AVENTIS US LLC and
AVENTIS PHARMACEUTICALS, INC.*

CERTIFICATE OF SERVICE

I, Rosanna K. McCalips certify that the foregoing DEFENDANTS SANOFI-AVENTIS US LLC AND AVENTIS PHARMACEUTICALS, INC.'S REQUEST FOR JUDICIAL NOTICE was served on December 7, 2007, on the counsel listed below in the manner(s) indicated below:

| <i>Via ECF:</i> | |
|--|--|
| Bruce E. Gerstein Barry S. Taus Anne K. Fornecker GARWIN GERSTEIN & FISHER LLP 1501 Broadway, Suite 1416 New York, NY 10036 Tel.: 212-398-0055 Fax: 212-764-6620 bgerstein@garwingerstein.com btaus@garwingerstein.com afornecker@garwingerstein.com | Eric L. Cramer BERGER & MONTAGUE, P.C. 1622 Locust Street Philadelphia, PA 19103 Tel.: 1-800-424-6690 Fax: (215) 875-4604 ecramer@bm.net |
| Richard Jo Kilsheimer Linda Nussbaum KAPLAN FOX & KILSHEIMER, LLP 850 Third Avenue, 14th Floor New York, NY 10022 Tel.: 212-687-1980 Fax: 212-687-7714 lnussbaum@kaplanfox.com rkilsheimer@kaplanfox.com | Adam Moskowitz Thomas A. Tucker Ronzetti KOZYAK TROPIN & THROCKMORTON 2525 Ponce De Leon Blvd, 9th Floor Miami, FL 33134 Tel.: (305)-372-1800 Fax: (305)-372-3508 amm@kttlaw.com tr@kttlaw.com |
| Stuart E. Des Roches Charles Ferrier Zimmer, II ODOM & DES ROCHE, LLP Suite 2020, Poydras Center 650 Poydras Street New Orleans, LA 70130 Tel.: (504) 522-0077 Fax: (504) 522-0078 stuart@odrlaw.com czimmer@odrlaw.com | |

| <i>Via Overnight Mail</i> | |
|--|---|
| <p>David P. Smith W. Ross Foote PERCY, SMITH & FOOTE LLP 720 Murray Street P.O. Box 1632 Alexandria, LA 71309 Tel: 318-445-4480 Fax: 318-487-1741</p> | <p>Brent Barriere Susie Morgan PHELPS DUNBAR Canal Place, Suite 2000 365 Canal Street New Orleans, LA 70130</p> |
| <p>John Gregory Odom ODOM & DES ROCHEs, LLP Suite 2020, Poydras Center 650 Poydras Street New Orleans, LA 70130 Tel.: (504) 522-0077 Fax: (504) 522-0078</p> | <p>Daniel Berger David F. Sorensen Peter Russell Kohn BERGER & MONTAGUE, P.C. 1622 Locust Street Philadelphia, PA 19103 Tel.: 1-800-424-6690 Fax: (215) 875-4604</p> |

/s/
Rosanna K. McCalips